



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

JOANN MCCRARY,
Plaintiff,

vs.

LORI WOOD, MARJORIE L. STANDIFER,
and RISK ENTERPRISE MANAGEMENT
LTD.,
Defendants.

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§ CIVIL ACTION NO. 6:10-1425-HFF-KFM
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ORDER

This case was filed as a personal injury action. Plaintiff is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that the Complaint be dismissed without prejudice and without issuance and service of process. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on June 10, 2010, and the Clerk of Court entered Plaintiff's objections to the Report on June 29, 2010.

In the Report, the Magistrate Judge recommended dismissing this case because, as pled, the Court lacks subject matter jurisdiction. Specifically, Plaintiff's Complaint alleges purely state law causes of action and it further alleges that both Plaintiff and Defendant Risk Enterprise Management LTD are Georgia residents. Thus, because there is not complete diversity between the parties, the Court agrees with the Magistrate Judge that the Court lacks jurisdiction over this action.

Plaintiff fails to address the Magistrate Judge's conclusion regarding jurisdiction. Instead, her Objections consist of her assertion of her right to a jury trial. As neither the Court nor a jury can act without jurisdiction, Plaintiff's objection is without merit.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Plaintiff's objections, adopts the Report and incorporates it herein. Therefore, it is the judgment of this Court that the Complaint is **DISMISSED** *without prejudice* and without issuance and service of process.

IT IS SO ORDERED.

Signed this 29th day of June, 2010, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

(please see notice on following page)

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within 30 days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.